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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JONATHAN HASWELL

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Appeal 2009-008144  
Application 10/737,139  
Technology Center 2400

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Before, ALLEN R. MACDONALD, ROBERT E. NAPPI, and  
DAVID M. KOHUT, *Administrative Patent Judges*.

KOHUT, *Administrative Patent Judge*.

## DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the final rejection of claims 1-40. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm the Examiner's rejection of these claims.

## INVENTION

The invention is directed to a method and system for controlling block-level storage on storage units. The system uses a policy manager in association with an access manager to determine access patterns and to select a RAID level of protection based upon the level of access. *See Spec:* 2-4. Claim 1 is representative of the invention and is reproduced below:

1. A filing system controlling block-level storage on a plurality of storage units, comprising:

a policy manager comprising at least one rule relating to block-level storage for a RAID level of protection for a file stored on the plurality of storage units, the RAID level of protection being selected from a plurality of RAID levels of protection, and at least one rule being based on an access pattern of files stored on the plurality of storage units, the filing system comprising information for each data block of the file indicating a number of other files in the filing system that require the data block for providing parity information for rebuilding each of the other files based on a parity calculation; and

an access manager providing the policy manager with information relating to access patterns of files stored on the plurality of storage units.

## REFERENCES

Nishida	US 5,677,900	Oct. 14, 1997
Styczinski	US 5,960,169	Sep. 28, 1999

Velez-McCaskey	US 6,098,128	Aug. 1, 2000
Gotoh	US 6,223,300 B1	Apr. 24, 2001
Rudoff	US 6,636,878 B1	Oct. 21, 2003 (Jan. 16, 2001)
Frey, Jr.	US 6,742,137 B1	May 25, 2004 (filed Aug. 17, 1999)
Bright	US 7,058,819 B2	Aug. 1, 2006 (filed Dec. 20, 2001)

#### REJECTIONS AT ISSUE<sup>1</sup>

Claims 1-3, 5, 6, 9, 10, and 12-14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Velez-McCaskey in view of Rudoff and Nishida. Ans. 3-5.

Claims 4 and 11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Velez-McCaskey in view of Rudoff, Nishida, and Bright. Ans. 5-6.

Claim 7 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Velez-McCaskey in view of Rudoff, Nishida, and Gotoh. Ans. 6-7.

Claim 8 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Velez-McCaskey in view of Rudoff, Nishida, and Styczinski. Ans. 7.

Claims 15-20, 24-26, 28-33, 35, 36, and 38-40 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Velez-McCaskey in view of Rudoff, Nishida, and Frey. Ans. 7-11.

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<sup>1</sup> The Examiner withdraws the non-statutory obviousness-type double patenting rejection in order to reduce the issues at appeal. Ans. 2.

Claims 22 and 34 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Velez-McCaskey in view of Rudoff, Nishida, Frey, and Styczinski. Ans. 11-12.

Claims 21 and 23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Velez-McCaskey in view of Rudoff, Nishida, Frey, and Gotoh. Ans. 12.

Claims 27 and 27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Velez-McCaskey in view of Rudoff, Nishida, and Frey. Ans. 12-13.

## ISSUES

Appellant argues on pages 5-10 of the Appeal Brief that the Examiner's rejection of claims 1-3, 5, 6, 9, 10, and 12-14 is in error. Appellant selects independent claim 1 as representative of the group comprising claims 1-3, 5, 6, 9, 10, and 12-14. App. Br. 9. Appellant argues that none of the references discloses either expressly or impliedly the subject matter of the claims. App. Br. 6. Additionally, Appellant argues that it would not have been obvious to combine Rudoff and Nishida with Velez-McCaskey. App. Br. 6.

Thus, with respect to claims 1-3, 5, 6, 9, 10, and 12-14, Appellant's contentions present us with two issues. First, did the Examiner err in finding that Velez-McCaskey, Rudoff, and Nishida disclose the claimed subject matter? Second, did the Examiner err in finding it obvious to combine Rudoff and Nishida with Velez-McCaskey?

Appellant argues on pages 10-16 of the Appeal Brief that the Examiner's rejections of claims 4, 7, 8, 11 and 15-40 are in error. Appellant

makes the same arguments with respect to these claims as with respect to claim 1. App. Br. 10-16.

Thus, with respect to the rejections claims 4, 7, 8, and 11 and 15-40, Appellant's contentions present us with the same issues as claim 1.

### ANALYSIS

Appellant's arguments have not persuaded us of error in the Examiner's rejection of claim 1. The limitations of claim 1 are listed above. Appellant argues that the Examiner does not show how the references either expressly or impliedly disclose the limitations of claim 1. App. Br. 6. However, the Examiner has explicitly listed citations to each of the references where the indicated limitations are found. Ans. 3-4. Since Appellant's arguments do not address these specific findings by the Examiner, we do not find Appellant's arguments to be persuasive.

Appellant submits that Velez-McCaskey requires parity information to be recorded on a "parity drive surface," whereas, Nishida requires parity information to be sequentially recorded on the storage medium with the data. App. Br. 7. As a result, Appellant argues that it would not have been obvious to combine Nishida with Velez-McCaskey since the combination changes the principle of operation of both references, i.e., where the parity information is stored. App. Br. 7. We disagree.

The Examiner finds that modifying Velez-McCaskey's system to include parity information with the data, as taught by Nishida, rather than in another area, as taught by Velez-McCaskey, would "provide error detection and correction when the data files are rebuilt" (citing Nishida, col. 1, ll. 29-

33). Ans. 4. We do not find, nor does Appellant indicate, how changing where a piece of information is stored changes the principle operation of either reference.

In response, Appellant argues “that the proffered reasoning is nothing more than a conclusory statement without any support.” App. Br. 8. We disagree. We find that the Examiner’s motivation to combine the references is not a conclusory statement since, as noted above; the Examiner finds an articulated reasoning with a rational underpinning within the Nishida reference supporting the proposed modification. Ans. 4. Since Appellant’s arguments do not address the specific motivation found by the Examiner, we do not find Appellant’s arguments to be persuasive.

For the reasons stated *supra*, we sustain the Examiner’s rejection of claim 1 and claims 2-3, 5, 6, 9, 10, and 12-14 that have been grouped with claim 1. Consequently, Appellant’s similar arguments with respect to claims 4, 7-8, 11, and 15-40 are likewise not persuasive.

## CONCLUSION

The Examiner did not err in finding that Velez-McCaskey, Rudoff, and Nishida disclose the claimed subject matter.

The Examiner did not err in finding it obvious to combine Rudoff and Nishida with Velez-McCaskey.

## SUMMARY

The Examiner’s decision to reject claims 1-40 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136 (a)(1)(iv).

Appeal 2009-008144  
Application 10/737,139

AFFIRMED

ELD